

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

**Rule making related to five-year review of rules**

The Human Services Department hereby amends Chapter 184, “Individual and Family Direct Support,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 217.6 and 225C.6.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 217.6 and 225C.6.

*Purpose and Summary*

Chapter 184 was reviewed and is amended as part of the Department’s five-year review of rules. Division I regarding the Family Support Subsidy Program is amended to update the definition of “family member” based on the federal Development Disabilities Assistance and Bill of Rights Act definition as codified in 42 U.S.C. 15002(8). Iowa Code section 225C.37 specifies that the Department cannot accept new applications for the program after July 1, 2010. Members who are currently enrolled in the program remain eligible until one of the reasons for termination is met. Members’ ongoing eligibility is determined annually based on a verification packet sent by the Department. If a member is determined eligible, the member’s monthly payment is determined annually based on the federal cost-of-living adjustment (COLA). This rule making brings the rules into compliance with the Iowa Code. Division II regarding the Comprehensive Family Support Program is amended to update an outdated reference to the United States Code and remove from the rules the form name and number of the application used to apply for the program, since the application form became obsolete effective July 1, 2016.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 23, 2022, as **ARC 6249C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on May 12, 2022.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on August 1, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend rule 441—184.1(225C), definition of “Family member,” as follows:

“*Family member*” means a person less than 18 years of age who by educational determination has a moderate, severe, or profound educational handicap or special health care needs or who otherwise meets the definition of developmental disability in the federal Developmental Disabilities Assistance and Bill of Rights Act, ~~Section 102(5)~~, as codified in 42 U.S.C. ~~6004(5)~~ 15002(8).

ITEM 2. Rescind rule 441—184.3(225C) and adopt the following new rule in lieu thereof:

**441—184.3(225C) Program termination.** As of July 1, 2010, the department shall no longer accept new applications or approve pending applications for the family support subsidy program pursuant to Iowa Code section 225C.37(3). Family members enrolled in the program as of July 1, 2010, will continue to receive subsidy payments until members meet one of the reasons for termination outlined in subrule 184.8(1).

ITEM 3. Amend rule 441—184.4(225C) as follows:

**441—184.4(225C) Family support services plan.**

~~184.4(1) The special needs of the child and the family for the subsidy, and the resources available to meet those needs shall be identified on the application form.~~

~~184.4(2)~~ **184.4(1)** The applicant shall agree that the subsidy will be used to meet the special needs identified in the plan or other special needs of the child and family.

~~184.4(3)~~ **184.4(2)** Families shall retain the greatest possible flexibility in determining use of the subsidy, except a parent or legal guardian who receives family investment program benefits shall not use the subsidy to meet the basic needs of the family as defined in 441—subrule 41.28(2) or the special needs as defined in 441—subrule 41.28(3). In addition, if the child receives Medicaid, the subsidy shall only be used for the cost of services which are not covered by Medicaid.

ITEM 4. Amend rule 441—184.6(225C) as follows:

**441—184.6(225C) Amount of subsidy payment.** Families approved for payment shall receive an ongoing monthly payment that is determined annually by the department based on the federal cost-of-living adjustment (COLA).

~~184.6(1) Monthly payment.~~ Families approved for payment shall receive an ongoing monthly payment that is determined by dividing the amount appropriated by the legislature by the number of available subsidy slots designated by the legislature for each state fiscal year. The number of slots and amount requested by the department shall be determined after consultation with the comprehensive family support council.

~~184.6(2) Advance payment.~~ In addition, a one-time lump-sum advance payment of twice the monthly amount may be paid to the parent or legal guardian whose family member will be returning home for the purpose of preparing for in-home care.

~~184.6(3) Effective date.~~ An approved subsidy shall be payable as of the first of the month following approval. A notice of decision stating that the application is approved shall be sent within two working

days of the approval. The notice shall state the date payments will begin, the amount of monthly payments, and, if different, the amount of the first payment.

ITEM 5. Amend rule 441—184.7(225C) as follows:

**441—184.7(225C) Redetermination of eligibility.** The department shall send a verification packet, which shall include instructions and necessary forms for verification of continuing eligibility, to all recipients of subsidy payments at least 30 calendar days prior to the deadline date for annual redetermination of eligibility. The completed verification materials shall be submitted annually to the department. If the signed verification of continuing eligibility is not received by the department by the last working day of the renewal month, the family's subsidy shall be terminated.

~~**184.7(1)** The department shall send an application packet, which shall include instructions and necessary forms for verification of continuing eligibility, to all recipients of subsidy payments at least 30 calendar days prior to the deadline date for annual redetermination of eligibility. The completed Form 470-2526, Application for Family Support Subsidy, and required verification materials shall be submitted annually to the Department of Human Services, Division of MH/MR/DD, Hoover State Office Building, Des Moines, Iowa 50319-0114. If the signed application and verification of continuing eligibility are not received by the division by the last working day of the renewal month, the family's subsidy shall be terminated.~~

~~**184.7(2)** When funding allows additional individuals to be added to the subsidy program, they shall be taken from the statewide waiting list, and their eligibility shall be redetermined at that time. An application packet, which includes instructions and necessary forms for verification of continuing eligibility, shall be sent to these families for completion and returned to the Department of Human Services, Division of MH/MR/DD, Hoover State Office Building, Des Moines, Iowa 50319-0114, within timelines specified by the department. If the signed application and verification of continuing eligibility are not received by the timeline specified by the department, the family's name shall be dropped from consideration for receipt of the subsidy payments.~~

ITEM 6. Amend subrule 184.8(3) as follows:

**184.8(3)** If funds are not sufficient to cover payments for all persons on the subsidy, persons will be terminated from the subsidy in inverse order to the dates they began receiving payments, i.e., the last person to be added on to the subsidy being the first person to be removed. ~~The person terminated will move back to the waiting list with the person's original application date dictating the person's position as stated in subrule 184.3(4).~~ The division of MH/MR/DD adult, children, and family services is responsible for notifying the persons who will be removed from the subsidy for this reason.

ITEM 7. Amend rule **441—184.21(225C)**, definition of “Individual with a disability,” as follows:

*“Individual with a disability”* means a person who is less than 22 years of age and meets the definition of developmental disability in 42 U.S.C. § ~~6004~~ §15002.

ITEM 8. Amend rule 441—184.23(225C) as follows:

**441—184.23(225C) Application.** A family may apply on an application developed by an entity contracted by the department. The application shall be submitted to the department or to a local children at home contractor for assistance using Form 470-4399, Application for Children at Home Services. The local children at home contractor shall determine eligibility for services in accordance with the provisions of this division.

ITEM 9. Amend rule 441—184.25(225C) as follows:

**441—184.25(225C) Direct assistance.** Each local children at home contractor shall, ~~with the advice and assistance of the parent advisory council described in rule 441—184.27(225C);~~ develop procedures for providing direct financial assistance for supports and services that cannot be funded through other programs or means. Local policies shall be submitted to and approved by the department.

ITEM 10. Rescind and reserve rule **441—184.27(225C)**.

ITEM 11. Amend **441—Chapter 184**, Division II implementation sentence, as follows:

These rules are intended to implement Iowa Code section 225C.47 ~~as amended by 2006 Iowa Acts, Senate File 2217, division VI.~~

[Filed 5/13/22, effective 8/1/22]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/15/22.